IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.5717 OF 2004
WITH
CRIMINAL APPLICATION NO.1074 OF 2005

The State of Maharashtra .. Applicant.

v/s.

Raghunath Tukaram Thakur & ors. .. Respondents.

Smt.V.R.Bhonsale, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 17th February, 2005

P.C.

Heard the learned APP.

2. The present respondents (original accused Nos.1 to 6 and 8) were put up for trial for the offences punishable under sections 120(b), 307 of the IPC and under section 27 read with section 25(a) of the Indian Arms Act in sessions case No.121/2000 in the Court of Ad-hoc Additional Sessions Judge, Raigad at Alibag.

3. Upon conclusion of the trial by his judgment dated 31st August, 2002, the learned trial Judge acquitted the present respondents. Aggrieved thereby the State presented criminal appeal (now converted in criminal application No.1074 of 2005 for leave to appeal) on 7th March, 2003. Since the

criminal application for leave to appeal is barred by time, by criminal application No.5717 of 2004, it is prayed that the delay in filing criminal application for leave to appeal be condoned.

4. As already noticed above, the impugned judgment came to be passed by the First Ad-hoc Additional Sessions Judge, Raigad at Alibag on 31.8.2002. An application for certified copy was made on that very day. The certified copy was ready on 4.9.2002 and delivered to the Public Prosecutor on that date. The concerned Public Prosecutor recommended filing of the appeal against the judgment of acquittal vide his opinion dated 9.9.2002. The Law and Judiciary Department examined the papers and vide resolution dated 2.12.2002 asked the office of the Public Prosecutor, High Court (Appellate Side), Mumbai to prefer an appeal before this court. The government resolution was received by the office of Public Prosecutor on 4.12.2002. However, the criminal appeal (now criminal application for leave to appeal) was filed on 7.3.2003.

5. The explanation for delay is that due to heavy workload, pressure of work and non-availability of stenographers, the appeal could not be filed in time. We are afraid, such a stereo-type explanation hardly merits acceptance. The explanation submitted in the application does not constitute sufficient

cause within the meaning of section 5 of Limitation Act. It is strange that the office of the Public Prosecutor did not move swiftly in filing the criminal appeal (criminal application for leave to appeal) even when the papers were received by them from the Law and Judiciary Department on the last day of filing the appeal. They took more than three months for preparation of the appeal which can hardly be justified.

6. The delay having not been sufficiently explained, criminal application for leave to appeal is liable to be dismissed as such.

7. However, we examined whether a case for grant of leave against the judgment of acquittal is made out or not.

8. The incident is said to have taken place on 9.8.98. According to the prosecution case when PW1 was returning home, he saw accused Nos.1,2,3 and 5 standing outside the office of accused No.1. All the accused persons proceeded on the same road PW1 Rajaram was going. Rajaram gave the accused persons space for proceeding ahead. According to him, he heard the noise of gun shot and sustained injury on the left side of his back near the left scapula. Rajaram also stated that he saw accused No.5 firing gun shot at him but the said shot mis-fired.

9. The learned trial Judge disbelieved the prosecution case on diverse grounds. Interalia, we find that as per the prosecution case, Rajaram (PW1) sustained the following injury:

> "Injury over the left chest posterior aspect near the medical border of left, scapula. It was deep wound of 2 x 1 cm. there was flap present on the left lower part of injury. This injury was surrounded by induration and multiple erosions, from 15 cms. of radu from the main injury."

10. Admittedly, PW1 Rajaram was examined by Dr. Narshetty and treated by him when he was taken to MGM Hospital. For the reasons best known to the prosecution, Dr.Narshetty was not examined and instead Dr. Anil (PW11) was examined. However, as per the evidence of PW11, the injury sustained by Rajaram could not have been caused by bullet fired. PW11 stated that the injury could have been caused by the hard and blunt substance.

11. The learned Judge found that the evidence of Rajaram suffered from material omission. Though PW1 stated that accused No.5 tried to fire gun shot at him and the said shot mis-fired and that accused No.5 handed over the revolver to accused No.1, no such narration finds place in the first information report (Exhibit 46).

12. In the backdrop, the finding of the learned

trial Judge that there was serious doubt about the genuineness of the prosecution story cannot be said to be without basis. The deposition of Rajaram (PW1) does not get corroborated from the medical evidence. Rather, the medical evidence falsifies the deposition of PW1.

13. All in all, the consideration of the matter by the learned trial Judge cannot be said to suffer from any legal infirmity.

14. For all what we have said above, the criminal application NO. 5717 of 2004 and criminal application No.1074 of 2005 for leave to appeal are liable to be dismissed. We order accordingly.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)